THE HONOURABLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No. 2752 of 2000

Date: 20.04.2007

Between:

D.Siva Rama Krishna Reddy

..Petitioner.

and

The Commissioner,
Vijayawada Municipal Corporation,
Vijayawada.1, and others.

..Respondents

THE HONOURABLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.2752 OF 2000

ORDER:

This Writ Petition is filed seeking a Writ of Mandamus declaring the inaction of the respondents 1 to 3 in considering the representations dated 18.01.1999 and 16.08.1999 made by the petitioner to take appropriate action for removal of unauthorized construction made by the 4th respondent in R.S.No.191/6A of patamata, Vijayawada, as illegal, arbitrary and contrary to the provision of the Municipal Corporation Act (for short, 'the Act'), and consequently direct them to take necessary action for removal of the same.

2. The case of the petitioner, in brief, is that he along with the fourth respondent herein are the members of Rajkumar Cooperative Building Society. Originally, the land along with a tiled house in it in an extent of 295 sq. yards in R.S.191/6A of Patamata, Vijayawada, was allotted to the fourth respondent, and when she was in need of money, she informed the same to the society and basing on its recommendation, she sold the said land to the petitioner for a sale consideration of Rs.75,000/- and she has executed a letter dated 05.10.1994 to that effect. Thereafter, a sale deed was executed in favour of the petitioner on 07.09.1988 by the Society.

While so, when the petitioner came to know of the fourth respondent applying for approval of making construction of a new

house in the said plot, he made a representation, dated 12.07.1997, to the respondents 1 and 2 not to sanction any plan in favour of the fourth respondent without giving personal hearing and causing enquiry into the matter and when there was no response, he filed WP.No.18243 of 1997 questioning the inaction of the respondents 1 and 2 and the same was disposed of on 06.08.1997 directing the respondents 1 and 2 to consider the representation made by him long back on 12.07.1997 and also to consider his objections before granting any approval to the fourth respondent for making construction in the said plot.

The main grievance of the petitioner is that in spite of the orders passed in W.P.No.18243 of 1997 and also his giving representation dated 18.01.1999 to the respondents 1 and 2 about the unauthorized construction, no action was taken by the respondents and that the fourth respondent completed the construction taking advantage of the respondents 1 and 2 in not taking any steps of stopping her construction.

Aggrieved by the inaction of the respondents 1 and 2 in taking necessary action under Section 452 of the Act, he filed W.P.No.3866 of 1999 and it was disposed of on 05.07.1999 observing that the 4th respondent was not made a party and kept open for him to take necessary action available under law. Subsequently, the petitioner filed another representation to the respondents 1 and 2, dated 16.08.1999, to remove the said unauthorized construction made by the fourth respondent in his plot as contemplated under Section 452 of the Act, but it too was in vain. Thus, as against the inaction of the respondents 1 to 3 in considering the representations dated 18.01.199 and 16.08.1999 made by the petitioner to take appropriate action for removal of the unauthorized constructions made by the fourth respondent in his plot, the present writ petition is filed.

3. The fourth respondent filed a detailed counter denying all the allegations made by the petitioner, more particularly, with regard to her selling the plot in question to the petitioner, receiving sale consideration from him, the letter dated 05.10.1994 said to have been executed by her and inaction of the respondents 1 and 2 in taking any action in spite of the representations dated 18.01.1999 and 16.08.1999 made by the petitioner. It is specifically contended by her that the petitioner with false averments filed W.P.No.32381 of 1997 and obtained a direction to the Registrar to register the sale deed in his favour without insisting for payment of Stamp Duty and Registration Fee, and that with a view to protect her interest, she got issued a statutory notice under Section 126 of the A.P. Cooperative Societies Act, on 17.01.2000, to the petitioner and to the Society to get a sale deed registered in her name, but the Society and the petitioner issued false reply notices with all false and untenable allegations, therefore, she filed O.S.No.1636 of 2000 on the file of Junior Civil Judge, Vijayawada, for a relief of Specific Performance of agreement dated 07.12.1987 against the petitioner, Society and others and it is still pending.

4. Heard both sides.

5. The grievance of the petitioner is that the fourth respondent is constructing a building in the land belonging to him and the respondents 1 to 3 though are informed of the same, they have not initiated any action in refusing the building permission given to the fourth respondent.

6. This Court was not inclined to grant interim orders at the time

when *Rule nisi* was issued. Now, it is apparent that the fourth respondent must have completed the construction and hence, the petitioner's remedy is elsewhere.

7. Hence, this Writ Petition is devoid of merits and is accordingly dismissed with a liberty to the petitioner to avail other remedies that are left open to him, if he so chooses. No costs.

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(GOPALA KRISHNA TAMADA,J)

20.04.2007
v v